

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

MITCHELL KILLION § CIVIL ACTION NO. 7:14-CV-713
§
v. § JURY
§
B&M LOGISTICS, INC. §

ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Mitchell Killion (plaintiff) complains of B&M LOGISTICS, INC. (defendant).

Plaintiff seeks compensatory damages for personal injuries he sustained when his passenger vehicle was rear-ended by defendant's tractor/trailer in Pharr, Texas on April 28, 2014 as a proximate result of the negligence of defendant's driver.

1. PARTIES

Plaintiff is a citizen or permanent resident of the United States. Plaintiff resides in the Southern District of Texas.

Defendant B&M Logistics, Inc. is incorporated in Tennessee, and has its principal place of business in Tennessee. Defendant committed a tort in Texas, and thus does business in Texas. Defendant is a "motor carrier," which is licensed and regulated by the Federal Motor Carrier Safety Administration ("FMCSA"), and which operates in the United States under DOT # 2268061.

Pursuant to 49 U.S.C. §13304, defendant designated the following registered agent for service of process in Texas:

Jeffrey P. Fultz, Esq.
5625 Cypress Creek Parkway, 6th Floor
Houston, TX 77069

Plaintiff believes that defendant's driver, Lyle Thomas Shafer, resides in Tennessee.

Mr. Shafer is not a required party, and is not joined because: (1) the Court can afford complete relief among existing parties in his absence; (2) he claims no interest relating to the subject matter of the action; and (3) his absence will not leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.

2. JURISDICTION

This Court has personal jurisdiction over the defendant because it does business in Texas, and committed a tort in Texas. This Court has diversity jurisdiction over these claims because the action is between citizens of a state (Texas) and a citizen of another state (Tennessee), and the amount in controversy, exclusive of interest and costs, exceeds the sum or value of \$75,000. 28 U.S.C. §1332 (a)(1).

3. VENUE

The collision made the subject of this suit occurred in the Southern District of Texas. Venue is thus proper in the Southern District of Texas because a substantial part of the events or omissions giving rise to plaintiff's claims occurred in the Southern District of Texas. 28 U.S.C. §1391 (a)(2). In addition, defendant is a corporation that is deemed to reside in the Southern District of Texas because it is subject to personal jurisdiction in the Southern District of Texas. 28 U.S.C. §1391 (c).

4. FACTS

On April 28, 2014, Mitchell Killion was driving a Chevy Tahoe southbound on U.S. 281 in Pharr, Texas.

Lyle Shafer Thomas, in the course and scope of his employment for B&M Logistics, Inc., was driving his employer's Freightliner tractor, pulling a trailer. Mr. Shafer was traveling directly

behind plaintiff.

Mr. Shafer failed to control his speed, and rear-ended plaintiff. Plaintiff was seriously injured in the collision.

5. NEGLIGENCE. The collision described above, and the resulting injuries and damages suffered by plaintiff, were actually and proximately caused by Mr. Shafer's negligence in one or more of the following acts or omissions:

- failing to maintain a safe distance behind the vehicle in front of him;
- failing to maintain a proper lookout;
- failing to timely and properly apply his brakes prior to the collision;
- driving his vehicle at a greater rate of speed than a reasonable and prudent person would have driven under similar conditions;
- failing to maintain control of his vehicle.

6. RESPONDEAT SUPERIOR. B&M Logistics, Inc., owned or leased or otherwise controlled the vehicle that Mr. Shafer was driving at the time of the collision. At that time, Mr. Shafer was an employee of B&M Logistics, Inc., and was driving its vehicle in the course and scope of his employment. B&M Logistics, Inc. is liable to plaintiff for Mr. Shafer's negligence through the doctrine of respondeat superior.

Alternatively, notwithstanding traditional common-law doctrines of master-servant or respondeat superior, Mr. Shafer was the statutory employee of B&M Logistics, Inc. *See* 49 C.F.R. §390.5 (defining "employee" and "employer"). B&M Logistics, Inc. is vicariously liable, as a matter of law, for Mr. Shafer's negligence.

7. NEGLIGENCE HIRING, SUPERVISION, TRAINING, or RETENTION

B&M Logistics, Inc. owed plaintiff a legal duty to hire, supervise, train, and retain competent employees. The facts and circumstances surrounding the collision suggest that Mr. Shafer was unqualified, improperly trained, and/or fatigued at the time of the collision. B&M Logistics, Inc. was negligent in failing to use ordinary care when hiring, supervising, training, or retaining Mr. Shafer. Mr. Shafer committed an actionable tort in the course and scope of his employment for B&M Logistics, Inc.

8. DAMAGES

As a direct and proximate result of defendant's acts and omissions, plaintiff suffered serious personal injury. Plaintiff's damages include,

- past, present, and future medical bills;
- past, present, and future physical pain and mental anguish;
- past, present, and future physical impairment;
- lost earnings and/or lost earnings capacity.

Plaintiff demands judgment against defendant for \$1 million, plus costs.

9. PREJUDGEMENT INTEREST

Plaintiff seeks pre-judgment interest on past damages.

10. JURY DEMAND

Plaintiff demands a jury.

P R A Y E R

WHEREFORE, plaintiff prays that, on final trial, plaintiff have:

1. Judgment against defendant for actual damages;
2. Pre-judgment interest;
3. Post-judgment interest;
4. Costs of suit;
5. All such other relief, at law or at equity, to which plaintiff may show himself to be entitled.

S/Edward L. Ciccone

Edward L. Ciccone
Attorney In Charge
Tx.SBN 04250550 / S.D.Tx.ID 4641
LAW OFFICE OF EZEQUIEL REYNA, JR. L.L.P.
702 W. Expressway 83
Weslaco, Texas 78596
Phone: (956)968-9556
Fax: (956) 969-0492
elciccone@mail.com

Attorneys For Plaintiff